142-615

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RECORD, CASE NO. 14115.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM NO. 749.

THE UNITED STATES, APPELLANT,

vs.

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

FILED AUGUST 27, 1890.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

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THE UNITED STATES, APPELLANT,

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1 In the Court of Claims, December term, 1887.

THE ALABAMA GREAT SOUTHERN Railroad Company *vs.* THE UNITED STATES. } No. 15868.

I.—*Petition filed Dec'r* 19, 1887.

To the Honorable the Court of Claims:

Your petitioner, the Alabama Great Southern Railroad Company, respectfully represents:

I. That it is a corporation organized under the laws of the State of Alabama and owns and operates a railroad from Chattanooga, in the State of Tennessee, through the States of Georgia and Alabama, to Meridian, in the State of Mississippi.

II. That the total length of said road is 295 miles; that the construction of that part of said railroad which lies in the States of Alabama and Mississippi, extending from the boundary line between the States of Georgia and Alabama to Meridian, in the State of Mississippi, being 270.50 miles in length, was aided by a grant or grants of public lands by the United States, in accordance with the provisions of an act entitled "An act granting public lands, in alternate sections, to the State of Alabama to aid in the construction of certain railroads in said State," approved June 3, 1856, and an act entitled "An act granting public lands, in alternate sections, to the State of Mississippi to aid in the construction of railroads in said State, and for other purposes," approved Au-
2 gust 11, 1856; that the construction of that part of said road which lies in the States of Tennessee and Georgia, extending from Chattanooga, in the State of Tennessee, to the boundary line between the States of Georgia and Alabama, being 24.50 miles in length, was not aided by a grant of public lands by the United States.

III. That the United States mail was carried upon said road by the Alabama & Chattanooga Railroad Company, which then owned and operated said road, from July 1, 1876, to June 30, 1880; that from July 1, 1876, to June 30, 1878, said company was paid for carrying the mails, as aforesaid, upon the 24.50 miles of said road, the construction of which was not aided by a land grant, at the rate of $45 per mile per annum; and for carrying the mails upon the 270.50 miles of said road, the construction of which was aided by a land grant, at the rate of $36 per mile per annum; that from July 1, 1878, to June 30, 1879, said company was paid for carrying the mails upon the 24.50 miles of said road, the construction of which was not aided by a land grant, at the rate of $42.75 per mile, and upon the 270.50 miles of said road, the construction of which was aided by a land grant, at the rate of $34.20 per mile; that from July 1, 1879, to June 30, 1880, said company was paid for carrying the mails upon the 24.50 miles of said road, the construction of which was not aided by a land grant, at the rate of $65.84 per mile, and upon the 270.50 miles of said road, the construction of which was aided by a land

grant, at the rate of $52.97 per mile; that said difference in the rates between the portions of road which were not aided by a land grant and those which were so aided was made by the Postmaster-General under color of the authority of the thirteenth section of an act entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1877, and for other purposes," approved July 12, 1876.

3 IV. That the United States mail was carried upon said road by your petitioner from July 1, 1880, to June 30, 1884; that your petitioner was paid for carrying the mails during said period upon the 24.50 miles of said road, the construction of which was not aided by land grant, at the rate of $75.24 per mile per annum, and upon the 270.50 miles of said road, the construction of which was aided by land grant, at the rate of $60.20 per mile per annum; that from July 1, 1884, to June 30, 1885, your petitioner was paid for carrying the mails upon the 24.50 miles of said road, which was not aided by land grant, at the rate of $131.67 per mile, and upon the 270.50 miles of said road, which was aided by land grant, at the rate of $105.33 per mile.

V. That on the 12th day of August, 1885, the following letter was written to the attorney of your petitioner by the Second Assistant Postmaster-General:

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
RAILWAY ADJUSTMENT DIVISION,
Washington, D. C., August 12, 1885.

SIR: An order has been made relative to the part of Route 17015, paid for as land grant, of which the following is a copy:

Modify order of April 13, 1877, No. 1747, so as to state the miles of land grant at 289.50 miles instead of 270.50 miles, and from July 1, 1876, to June 30, 1878, pay the Alabama & Chattanooga R. R. Co. for service between Chattanooga and Meridian, at the rate of $10,669.50 per annum, being $45 per mile for 5.50 miles, Chattanooga to Wauhatchie, and $36 per mile for 289.50 miles, Wauhatchie to Meridian, land grant. 2d. Modify order of July 23, 1878, No. 5669, so as to pay the same company between the same points, from July 1, 1878, to June 30, 1879, at the rate of $10,136.02 per annum, being $42.75 per mile for 5.50 miles, Chattanooga to Wauhatchie, not land grant, and $34.20 per mile for 289.50 miles, Wauhatchie to Meridian, land grant. 3rd. Modify order of October

4 10, 1879, No. 10404, so as to pay the same company for service between the same points, from July 1, 1879, to June 30, 1880, at the rate of $15,610.08 per annum, being $65.84 per mile for 5.50 miles, Chattanooga to Wauhatchie, not land grant, and $52.67 per mile for 289.50 miles, Wauhatchie to Meridian, land grant.

Modify order of August 16, 1880, No. 9396, so as to pay the Alabama & Great Southern R. R. Co. for service between Chattanooga and Meridian, from July 1, 1880, to June 30, 1884, at the rate of $17,882.34 per annum, being $75.24 per mile for 6.04 miles, Chattanooga to Wauhatchie, not land grant, and $60.20 per mile for 289.50 miles, Wauhatchie to Meridian, land grant.

Modify order of August 19, 1884, No. 13179, so as to pay the Alabama & Great Southern R. R. Co. for service between Chattanooga and Meridian from July 1, 1884, to June 30, 1888, at the rate of $31,276.46 per annum, being $131.67 per mile for 5.95 miles, Chattanooga to Wauhatchie, not land grant, and $105.33 per mile for 289.50 miles, Wauhatchie to Meridian, land grant, all in accordance with the distance ascertained to be subject to the conditions of the granting act.

Very respectfully,

(Signed) A. LEO KNOTT,
Second Asst. P. M. General.

Mr. G. H. WILCOX,
Attorney Alabama & Great Southern R. R. Co.,
(1416 *F street*) 916 *F street N. W.,*
Washington, D. C.

VI. That no new facts not within the knowledge of the Postmaster-General at the time when the payments as before set out were made to the Alabama & Chattanooga Railroad Company and your petitioner were known to the Second Assistant Postmaster-General or the Postmaster-General when said letter was written or the order described therein was made; that no mistake of fact was made in making payment as aforesaid to the Alabama & Chattanooga Railroad Company and to your petitioner; but said letter was written and said order was made solely because of a difference of opinion as to the meaning of the act of July 12, 1876, aforesaid, between the Postmaster-General in office at the date of said order and letter and his predecessors.

VII. That an account was stated in the Post-Office or Treasury Department against your petitioner in accordance with said letter and order for all sums paid to the Alabama & Chattanooga Railroad Company and to your petitioner in excess of the rates specified in said letter and order; said accounts so being made up in the following manner:

Total length of road		295 miles
By the old rule payment was fixed:		
At the full rate upon	24.50 miles	
At the land grant rate upon	270.50	
		295 miles
By the new rule payment was fixed:		
At the full rate upon	5.50 miles	
At the land grant rate upon	289.50	
		295 miles
The length of the road in controversy is		19 miles

Payments to the Alabama & Chattanooga Railroad Company.

From July 1, 1876, to June 30, 1878:	
Difference between $45 and $36 per mile per annum, $9 on 19 miles for 2 years	$342.00
From July 1, 1878, to June 30, 1879:	
Difference between $42.75 and $34.20 per mile per annum, $8.55 on 19 miles for 1 year	162.45
From July 1, 1879, to June 30, 1880:	
Difference between $65.84 and $52.67 per mile per annum, $13.17 on 19 miles for 1 year	250.23
Total	754.68

Payments to the Alabama Great Southern Railroad Company.

From July 1, 1880, to June 30, 1884:	
Difference between $75.24 and $60.20 per mile per annum, $15.04 on 19 miles for 4 years	$1,143.04
6 From July 1, 1884, to June 30, 1885:	
Difference between $131.67 and $105.33 per mile per annum, $26.34 on 19 miles for 1 year	500.46
Total	1,643.50
Brought forward	$1,643.50
Adding thereto the payments made to Alabama & Chattanooga Railroad Company	754.68
Making a total of	2,398.18

That said sum was charged to and recovered from your petitioner by deducting the same from the next payment made to your petitioner by the United States on account of mail service; and your petitioner claims from the United States the said amounts of $754.68 and $1,643.50.

VIII. That since the 1st day of July, 1885, your petitioner has been paid for carrying the mails upon 5.50 miles of said road at the rate of $131.67 per mile per annum, and on 289.50 miles of said road at the rate of $105.33 per mile per annum; whereas your petitioner is entitled to be paid for carrying the mails on 24.50 miles of said road at $131.67 per mile per annum, and on 270.50 miles of said road at the rate of $105.33 per mile per annum, the difference being $26.34 per mile for 19 miles, making $500.46 per year; and your petitioner claims the sum of $1,126.04 as due upon said account from July 1, 1885, to September 30, 1887.

IX. That your petitioner has protested against the aforesaid order and against the action of the Post-Office Department in causing both a deduction of the sums paid for service prior to July 1, 1885, and a reduction in the rate of pay for service thereafter rendered, but no action favorable to your petitioner has been taken.

X. This petitioner, in presenting the claims set forth in this pe-
7 tition, does not waive its rights to present other claims for other amounts due for carrying the mails during the same or past or future periods upon the road herein described, but now asks consideration only of the claims herein set out.

XI. No other action than as aforesaid has been had in Congress or by any of the Departments.

Your petitioner is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

Your petitioner is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets.

Your petitioner is a citizen of the United States and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and your petitioner believes the facts, as stated in this petition, to be true. And your petitioner prays judgment for the sums of $754.68, $1,643.50, and $1,126.04, making a total of $3,524.22.

M. D. BRAINARD,
Attorney for Claimant.

M. D. Brainard, being duly sworn, deposes and says: I am the attorney of the Alabama Great Southern Railroad Company, the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

M. D. BRAINARD,
Attorney of the Alabama Great Southern Railroad Company.

Subscribed and sworn to before me this 19th day of December, 1887.
[SEAL.] JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

8 II—*General traverse, filed January* 25, 1888.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-General.

9 In the Court of Claims. December term, 1887.

THE ALABAMA GREAT SOUTHERN Railroad Company *vs.* THE UNITED STATES. } No. 15868.

III.—*Amended petition. Filed (by leave of court) Jan.* 27, 1888.—*J. R.*

To the honorable the Court of Claims:

Your petitioner, the Alabama Great Southern Railroad Company, respectfully represents:

I. That it is a corporation organized under the laws of the State of Alabama, and operates a railroad from Chattanooga, in the State of Tennessee, through the States of Georgia and Alabama, to Meridian, in the State of Mississippi; that the total length of said road is 295.45 miles, of which your petitioner owns 289.75 miles and operates under lease 5.70 miles.

II. That the construction of that part of said railroad which lies in the States of Alabama and Mississippi, extending from the boundary line between the States of Georgia and Alabama to Meridian, in the State of Mississippi, being 263.85 miles in length, was aided by a grant or

10 grants of public lands by the United States, in accordance with the provisions of an act entitled "An act granting public lands, in alternate sections, to the State of Alabama to aid in the construction of certain railroads in said State," approved June 3, 1856, and an act entitled "An act granting public lands, in alternate sections, to the State

of Mississippi to aid in the construction of railroads in said State, and for other purposes," approved August 11, 1856; that the construction of that part of said road which lies in the States of Tennessee and Georgia, extending from Chattanooga, in the State of Tennessee, to the boundary line between the States of Georgia and Alabama, being 31.60 miles in length, was not aided by a grant of public lands by the United States.

III. That in all payments heretofore made by the United States, it has been by them erroneously assumed that the total length of your petitioner's said road is 295 miles, and that of said distance 270.50 miles was aided by land grants under the acts aforesaid, and 24.50 miles was not so aided.

IV. That the United States mail was carried upon said road by the Alabama & Chattanooga Railroad Company, which then owned and operated said road, from July 1, 1876, to June 30, 1880; that the Postmaster-General, under color of the authority of the thirteenth section of an act entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1877, and for other purposes," approved July 12, 1876, made a discrimination in the rates of pay allowed for carrying the mails, fixing the pay per mile for the number of miles deemed to have been aided by land grant at a rate of twenty per cent less than upon the number of miles not deemed to have been aided by land grant, using as a basis of calculation the erroneous distances stated in the preceding paragraph; that during said periods payments were made by the Postmaster-General as follows:

11 From July 1, 1876, to June 30, 1878:

	Per mile.
Upon 24.50 miles at	$45.00
Upon 270.50 miles at	36.00
From July 1, 1878, to June 30, 1879:	
Upon 24.50 miles at	42.75
Upon 270.50 miles at	34.20
From July 1, 1879, to June 30, 1880:	
Upon 24.50 miles at	65.84
Upon 270.50 miles at	52.97

V. That the United States mail was carried upon said road by your petitioner from July 1, 1880, to June 30, 1885; that during said period payments were made to your petitioner as follows:

From July 1, 1880, to June 30, 1884:

	Per mile.
Upon 24.50 miles at	$75.24
Upon 270.50 miles at	60.20
From July 1, 1884, to June 30, 1885:	
Upon 24.50 miles at	131.67
Upon 270.50 miles at	105.33

VI. That on the 12th day of August, 1885, the following letter was written to the attorney of your petitioner by the Second Assistant Postmaster-General:

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
RAILWAY ADJUSTMENT DIVISION,
Washington, D. C., August 12, 1885.

SIR: An order has been made relative to the part of route 17015 paid for as land grant, of which the following is a copy:

Modify order of April 13, 1877, No. 1747, so as to state the miles of land grant at 289.50 miles instead of 270.50 miles, and from July1, 1876,

12 to June 30,1878, pay the Alabama & Chattanooga R. R. Co. for service between Chattanooga and Meridian at the rate of $10,669.50 per annum, being $45 per mile for 5.50 miles, Chattanooga to Wauhatchie, and $36 per mile for 289.50 miles, Wauhatchie to Meridian, land grant. 2d. Modify order of July 23, 1878, No. 5669, so as to pay the same company between the same points from July 1, 1878, to June 30, 1879, at the rate of $10,136.02 per annum, being $42.75 per mile for 5.50 miles, Chattanooga to Wauhatchie, not land grant, and $34.20 per mile 289.50 miles, Wauhatchie to Meridian, land grant. 3rd. Modify order of October 10, 1879, No. 10404, so as to pay the same company for service between the same points from July 1, 1879, to June 30, 1880, at the rate of $15,610.08 per annum, being $65.84 per mile for 5.50 miles, Chattanooga to Wauhatchie, not land grant, and $52.67 per mile for 289.50 miles, Wauhatchie to Meridian, land grant.

Modify order of August 16, 1880, No. 9396, so as to pay the Alabama & Great Southern R. R. Co., for service between Chattanooga and Meridian, from July 1, 1880, to June 30, 1884, at the rate of $17,882.34 per annum, being $75.24 per mile for 6.04 miles, Chattanooga to Wauhatchie, not land grant, and $60.20 per mile for 289.50 miles, Wauhatchie to Meridian, land grant.

Modify order of August 19, 1884, No. 13179, so as to pay the Alabama & Great Southern R. R. Co., for service between Chattanooga and Meridian, from July 1, 1884, to June 30, 1888, at the rate of $31,276.46 per annum, being $131.67 per mile for 5.95 miles, Chattanooga to Wauhatchie, not land grant, and $105.33 per mile for 289.50 miles, Wauhatchie to Meridian, land grant, all in accordance with the distance ascertained to be subject to the conditions of the granting act.

Very respectfully,

A. LEO KNOTT.
Second Asst. P. M. General.

Mr. G. H. WILCOX,
Attorney Alabama & Great Southern R. R. Co.
(1416 F street), 916 F street N. W., Washington, D. C.

13 VII. That no new facts favorable to the United States not within the knowledge of the Postmaster-General at the time when the payments as before set out were made to the Alabama & Chattanooga Railroad Company and your petitioner were known to the Second Assistant Postmaster-General or the Postmaster-General when said letter was written or the order therein described was made; that no mistake of fact in favor of the Alabama & Chattanooga Railroad Company and your petitioner was made in making payment as aforesaid to the Alabama & Chattanooga Railroad Company and to your petitioner; but said letter was written and said order was made solely because of a difference of opinion as to the meaning of the act of July 12, 1876, aforesaid, between the Postmaster-General in office at the date of said order and letter and his predecessors.

VIII. That an account was stated in the Post-Office or Treasury Department against your petitioner in accordance with said letter and order for all sums paid to the Alabama & Chattanooga Railroad Company and

to your petitioner in excess of the rates specified in said letter and order; said accounts so being made up in the following manner:

	Miles.	Miles.
Total length of road used in all of said calculations		295
By the old rule payment was fixed:		
At the full rate upon	24.50	
At the land-grant rate upon	270.50	
		295
By the new rule payment was fixed—		
At the full rate upon	5.50	
At the land-grant rate upon	289.50	
		295
The length of the road in controversy is		19

14 *Payments to the Alabama & Chattanooga Railroad Company.*

From July 1, 1876, to June 30, 1878:	
Difference between $45 and $36 per mile per annum, $9, on 19 miles for 2 years	$342.00
From July 1, 1878, to June 30, 1879:	
Difference between $42.75 and $34.20 per mile per annum, $8.55, on 19 miles for 1 year	162.45
From July 1, 1879, to June 30, 1880:	
Difference between $65.84 and $52.67 per mile per annum, $13.17, on 19 miles for 1 year	250.23
Total	754.68

Payments to the Alabama Great Southern Railroad Company.

From July 1, 1880, to June 30, 1884:	
Difference between $75.24 and $60.20 per mile per annum, $15.04, on 19 miles for 4 years	$1,143.04
From July 1, 1884, to June 30, 1885:	
Difference between $131.67 and $105.33 per mile per annum, $26.34, on 19 miles for 1 year	500.46
Total	1,643.50
Adding thereto the payments made to the Alabama & Chattanooga Railroad Company	754.68
Making a total of	2,398.18

That said sum was charged to and recovered from your petitioner by deducting the same from the next payment made to your petitioner by the United States on account of mail service; and your petitioner claims from the United States the said amounts of $754.68 and $1,643.50.

15 IX. That since the 1st day of July, 1885, your petitioner has been paid for carrying the mails upon 5.50 miles of said road at the rate of $131.67 per mile per annum, and on 289.50 miles of said road at the rate of $105.33 per annum; whereas your petitioner is entitled, upon the basis heretofore conceded by the Postmaster-General, to be paid for carrying the mails on 24.50 miles of said road at $131.67 per mile per annum, and on 270.50 miles of said road at the rate of $105.33 per mile per annum, the difference being $26.34 per mile for 19 miles, making $500.46 per year; and your petitioner claims the sum of $1,126 04 as due upon said account from July 1, 1885, to September 30, 1887.

X. That your petitioner has protested against the aforesaid order and against the action of the Post-Office Department in causing both a deduction of the sums paid for service prior to July 1, 1885, and a reduction in the rate of pay for service thereafter rendered, but no action favorable to your petitioner has been taken.

XI. Your petitioner asserts that the basis of calculation heretofore used by the Postmaster-General in fixing the number of miles of the road of your petitioner assisted by land-grant at 270.50 miles and the number of miles of road not so assisted at 24.50, making a total of 295 miles, is erroneous and that the correct basis of calculation for pay is, as stated in Paragraph II of this petition, to wit, 263.85 miles of road assisted by land-grant and 31.60 miles not assisted by land-grant, making a total of 295.45 miles. While your petitioner admits that the settlement heretofore made for services rendered prior to January 1, 1882, cannot be re-opened by this action on account of the statute of limitations, and your petitioner does not seek to re-open the same, your petitioner now claims pay from January 1, 1882, to September 30, 1887, in addition to the amounts claimed in Paragraphs VIII and IX (the accounts stated
16 in said paragraphs being calculated upon the erroneous basis of distance heretofore used by the Postmaster-General), the following sums, these being due by reason of the error in fact as to the length of the land-grant and the non-land-grant portions of the road and the total length of the road:

For 6.65 miles for which the lower rate was paid and the higher rate due:	
From Jan. 1, 1882, to June 30, 1884, 2½ years, difference between $60.20 and $75.24, being $15.04, per mile per year	$250.04
From July 1, 1884, to Sept. 30, 1887, 3¼ years, difference between $105.33 and $131.67, being $26.34, per mile per year	569.27
For .45 mile for which no payment has been made:	
From Jan. 1, 1882, to June 30, 1884, 2½ years, at $75.24 per year per mile	84.65
From July 1, 1884, to Sept. 30, 1887, 3¼ years, at $131.67 per year per mile	192.56
Making a total of	1,096.52

XII. That your petitioner has called upon the Postmaster-General to readjust the compensation upon said road to accord with the correct distances and to pay the arrears due upon such readjustment, but no action has been taken thereon.

XIII. This petitioner, in presenting the claims set forth in this petition, does not waive its rights to present other claims for other amounts due for carrying the mails during the same or past or future periods upon the road herein described, but now asks consideration only of the claims herein set out.

XIV. No other action than as aforesaid has been had in Congress or by any of the Departments.

17 Your petitioner is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim or of any part thereof or interest therein has been made.

Your petitioner is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets.

Your petitioner is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and your petitioner believes the facts as stated in this petition to be true. And your petitioner prays judgment for the following sums:

Amount paid to the Alabama & Chattanooga R. R. Co. and withheld from your petitioner (Paragraph VIII)	$754.68
Amount paid to your petitioner and subsequently withheld (Paragraph VIII)	1,643.50

Amount due your petitioner from July 1, 1885, to Sept. 30, 1887, upon the old basis used by the Postmaster-General (Paragraph IX)	$1,126.04
Additional amount due upon correct calculation of distances (Paragraph XI)	1,096.52
Making a total of	4,620.74

M. D. BRAINARD,
Attorney for claimant.

CHARLES & WILLIAM B. KING, *Counsel.*

M. D. Brainard, being duly sworn, deposes and says: I am the
18 attorney of the Alabama Great Southern Railroad Company, the claimant in this case. I have read above petition, and the matters therein stated are true to the best of my knowledge and belief.

M. D. BRAINARD,
Attorney of the Alabama Great Southern Railroad Company.

Subscribed and sworn to before me this 27th day of January, 1888.
[SEAL.] ROBINSON WHITE,
Notary Public.

19 IV.—*General traverse to amended petition. Filed Nov.* 24, 1888.

And now comes the Attorney-General, on behalf of the United States, and answering the amended petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-General.

20 DEFENDANT'S COUNTER-CLAIM.

V.—*Counter-claim. Filed May* 2, 1889.

Now comes the Attorney-General, and, in answer by way of counter-claim and set-off, says that at the time of the filing of the amended petition herein by the claimant there was due to the United States from the said claimant and its immediate predecessor and grantor, the Alabama and Chattanooga Railroad Company, in overpayments for mail service authorized on the railroad route mentioned in the said amended petition, the following sums, to wit:

Amount paid to the Alabama and Chattanooga Railroad Company and withheld from your petitioner (Paragraph VIII)	$754.68
Amount paid to your petitioner and subsequently withheld (Paragraph VIII)	1,643.50

Wherefore the defendant prays that the said sums may be set off against the claimant's demand, and for all proper relief.

ROBERT A. HOWARD,
Assistant Attorney-General.
HEBER J. MAY,
Assistant Attorney.

APRIL 7, 1889.

21 *Replication to counter-claim and motion for leave to file same allowed to be filed Nov'r 29, 1889.*

MOTION FOR LEAVE TO FILE REPLICATION TO COUNTER-CLAIM.

The claimant moves for leave to file the replication to the counter-claim of defendants, herewith presented, the time for filing said replication under rule 17 having expired.

M. D. BRAINARD,
Attorney for Claimants.

CHARLES & WM. B. KING,
Counsel.

VI.—*Replication to counter-claim.*

Now comes the claimant, the Alabama Great Southern Railroad Company, and by way of replication to the plea of counter-claim of the defendants herein says: That the sums of seven hundred and fifty-four dollars and sixty-eight cents ($754.68) and one thousand six hundred and forty-three dollars and fifty cents ($1,643.50) stated in said counter-claim, or any sum or sums was not at the time of the filing of the amended petition of the claimant, or at any other time before or since, due
22 from this claimant to the United States.

Wherefore the claimant prays that said counter-claim be dismissed.

M. D. BRAINARD,
Attorney for Claimant..

CHARLES & WM. B. KING,
Counsel.

DISTRICT OF COLUMBIA, *ss:*

M. D. Brainard, being duly sworn, deposes and says: That he is the attorney for the claimant in the above-entitled cause; that he has read the foregoing replication to the counter-claim of the defendants; that said replication is true to the best of his knowledge and belief.

M. D. BRAINARD.

Sworn to and subscribed before me this twenty-seventh day of November, 1889.

[SEAL.]

L. L. APPLE,
Notary Public.

23 VII.—*Findings of fact & conclusions of law.*

FINDINGS OF FACT.

I.

The claimant is a corporation organized under the laws of the State of Alabama, and operates a railroad from Chattanooga, in the State of Tennessee, to Meridian, in the State of Mississippi, the said road being successively in the States of Tennessee, Georgia, Alabama, and Mississippi.

II.

The distances upon said road are as follows:

	Miles.
In the State of Tennessee:	
Chattanooga to Wauhatchie	5.7
Wauhatchie to Georgia State line	1.6
In the State of Georgia:	
To Alabama State line	24.3
Total nonland-grant road	31.6
Length of line in Alabama	244.9
Length of line in Mississippi	18.7
Meridian depot to post-office	.25
Total land-grant road	263.85
Total	295.45

The claimant owns the whole of said road excepting 5.7 miles from Chattanooga to Wauhatchie, which it operates under a lease.

III.

The construction of that part of the line of said railroad which is in the States of Alabama and Mississippi was aided by grants of land made by the United States to the States of Alabama and Mississippi by the acts of June 3, 1856, and August 11, 1856; the part so aided is 263.85 miles in length. The construction of that part of said railroad lying in the States of Tennessee and Georgia was not aided by land grants from the United States, and is 31.6 miles in length, of which 5.7 miles is not owned by the claimant, but is operated under lease.

24 IV.

The following orders were made by the Post-Office Department upon the dates named in relation to the pay of the Alabama and Chattanooga Railroad Company for carrying the mails on said road from July 1, 1876, to June 30, 1880:

Term 1876 *to* 1880.

1876, Oct. 13—No. 5491.—Authorize the Auditor of the Treasury for the Post-Office Department to pay the Alabama and Chattanooga Railroad Company for carrying the mail between Chattanooga and Meridian, from July 1st to Sept. 30, 1876, at the rate of $11,066.40 per annum ($38.16 per mile per annum), being 80 per centum of the rate authorized by the 1st section of the act of July 12, 1876, subject to fines and deductions; with the understanding that the pay shall be readjusted from same date upon returns to be submitted. Service, seven round trips.

1876, Oct. 27—No. 6007.—Modify order of Oct. 13, 1876 (No. 5491), so as to state distance as being 295 miles, and pay at the rate of $11,257.20 per annum (being $38.16 per mile per annum), instead of $11,066.40 per annum.

1877, Jan. 4—No. 64.—Authorize the Auditor of the Treasury for the Post-Office Department to pay the Alabama and Chattanooga Railroad

Company, quarterly, for carrying the mail between Chattanooga, Tenn., and Meridian, Miss., from Oct. 1st, 1876, to Dec. 31, 1877, at the rate of $11,257.20 per annum (being $38.16 per mile per annum), unless otherwise ordered, subject to fines and deductions; with the understanding that the pay shall be readjusted from same date upon returns to be submitted.

1877, Apr. 13—No. 1747.—Recall order of Jan. 4th, 1877, No. 64, and authorize the Auditor of the Treasury for the P. O. Department to pay for the service from July 1st, 1876, to June 30, 1880, at the rate of $10,840.50 per annum (being $45 per mile on 24.5 miles, and $36 per mile on 270.5 miles), being a reduction of 10 per cent, under the 1st section of the act of July 12, 1876, and the allowance of 80 per cent, after such reduction on the land-grant portion of the route, viz, from Wauhatchie to the State line, 270.5 miles.

1877, April 14—No. 1775.—Modify order of April 13, 1877 (No. 1747), so as to add the words "unless otherwise ordered, subject to fines and deductions."

1878, July 23—No. 5669.—Authorize the Auditor to decrease the pay of the Alabama and Chattanooga Railroad Company for carrying the mails between Chattanooga and Meridian, from July 1, 1878, to June 30, 1880, at the rate of 542.03 per annum, leaving the pay from that date $10,298.47 per annum ($42.75 for 24.5 miles, and $34.20 for 270.5 miles), being a reduction of five per centum from the rates fixed for weight of mails, in accordance the act of June 17, 1878.

1879, Oct. 10—No. 10404.—From July 1, 1879, increase pay at the rate of $5,561.84 per annum, making annual pay from that date $15,860.31, being $52.67 per mile from Wauhatchie to State line, 275.5 miles (land grant), and $65.84 per mile residue, 24.5 miles, in accordance with new returns for July, '79, and the act of June 17, 1878.

Said company was paid for carrying the mails as aforesaid, from July 1, 1876, to June 30, 1880, at the rates named in the orders of April 13, 1877, No. 1747; July 23, 1878, No. 5669, and October 10, 1879, No. 10404.

V.

The following orders were made by the Post-Office Department upon the dates named in relation to the pay of the Alabama Great Southern Railroad Company for carrying the mails upon said road from July 1, 1880, to June 30, 1888:

1880, Aug. 16.—No. 9396.—Authorize the Auditor of the Treasury for the Post-Office Department to pay the Alabama and Great Southern Railroad Company, quarterly, for carrying the mail between Chattanooga and Meridian, from July 1, 1880, to June 30, 1884, at the rate of $18,168.10 per annum, being $75.24 per mile for 25.04 miles, and $60.20 per mile for 270.50 miles, Wauhatchie to State line (land grant), for transportation. This adjustment unless otherwise ordered and subject to fines and deductions.

1884, Aug. 19—No. 13179.—Pay the Alabama and Great South-
25 ern Railroad Company quarterly, for carrying the mail between Chattanooga and Meridian, from July 1, 1884, to June 30, 1888,

at the rate of $31,776.92 per annum, being $105.33 per mile for 270.50 miles l. g., and $131.67 per mile for 24.95 miles for transportation. This adjustment is subject to future orders and to fines and deductions.

Said company was paid for carrying the mails as aforesaid from July 1, 1880, to June 30, 1884, at the rate fixed in the order of August 16, 1880, No. 9396, and from July 1, 1884, to June 30, 1885, at the rate fixed in the order of August 19, 1884, No. 13179.

VI.

The following orders were made by the Post Office Department on the date given:

1885, Aug. 10.—No. 12296.—Modify order of Aug. 16, 1880 (No. 9396), so as to pay the Alabama and Great Southern R. R. Co. for service between Chattanooga and Meridian, from July 1, 1880, to June 30, 1884, at the rate of $17,882.34 per annum, being $75.24 per mile for 6.04 miles, between Chattanooga and Wauhatchie, not land grant, and $60.20 per mile for 289.50 miles, between Wauhatchie and Meridian, land grant, in accordance with the distance ascertained, to be subject to the conditions of the granting act.

1885, Aug. 10.—No. 12297.—Modify order of August 19, 1884, No. 13179, so as to pay the Alabama and Great Southern R. R. Co. for service between Chattanooga and Meridian, from July 1, 1884, to June 30, 1888, at the rate of $31,276.46 per annum, being $131.67 per mile for 5.95 miles, Chattanooga to Wauhatchie, not land grant, and $105.33 per mile for 289.50 miles, Wauhatchie to Meridian, land grant, in accordance with the distance ascertained, to be subject to the conditions of the granting act.

1885, Aug. 12.—No. 12298.—1st. Modify order of April 13, 1877 (No. 1747), so as to state the miles of land grant at 289.50 miles instead of 270.50 miles; and from July 1, 1876, to June 30, 1878, pay the Alabama and Chattanooga R. R. Co., for service between Chattanooga and Meridian, at the rate of $10,669.50 per annum, being $45 per mile for 5.50 miles, Chattanooga to Wauhatchie, not land grant, and $36 per mile for 289.50 miles, Wauhatchie to Meridian, land grant.

2d. Modify order of July 23, 1878 (No. 5669), so as to pay the same company for service between the same points from July 1, 1878, to June 30, 1879, at the rate of $10,136.02 per annum, being $42.75 per mile for 5.50 miles, Chattanooga to Wauhatchie, not land grant, and $34.20 per mile for 289.50 miles, Wauhatchie to Meridian, land grant.

3d. Modify order of Oct. 10, 1879 (No. 10404), so as to pay the same company for service between the same points from July 1, 1879, to June 30, 1880, at the rate of $15,610.08 per annum, being 65.84 per mile for 5.50 miles, Chattanooga to Wauhatchie, not land grant, and $52.67 per mile for 289.50 miles, Wauhatchie to Meridian, land grant, all in accordance with the distance ascertained to be subject to the conditions of the granting act.

In compliance with these orders, deductions were made from the current mail pay of the Alabama Great Southern Railroad Company, so as to reduce the compensation of the Alabama and Chattanooga Railroad Company from July 1, 1876, to June 30, 1880, and of the Alabama Great

Southern Railroad Company from July 1, 1880, to June 30, 1880, to the amounts fixed in said orders.

From July 1, 1885, to September 30, 1887, the Alabama Great Southern Railroad Company has been paid at the reduced rate fixed in the order of August 12, 1885, No. 12297.

VII.

The amount deducted from the pay of the claimant on account of payments made to the Alabama and Chattanooga Railroad Company for service between July 1, 1876, and June 30, 1880, was $754.72.

The amount deducted from the pay of the claimant on account of payments theretofore made to the claimant for service between July 1, 1880, and June 30, 1885, was $1,643.52.

26 The difference between the amount paid the claimant for service between July 1, 1885, and September 30, 1887, under the order of August 12, 1885, No. 12297, and the amount payable under the order of August 19, 1884, was $1,126.08.

VIII.

The orders of the Post-Office Department of August 12, 1885, Nos. 12296, 12297, and 12298, and the deductions consequent thereupon, were not made on account of any mistake of fact in the original orders under which payment had been made, but on account of a supposed error of law therein as to the construction of the thirteenth section of an act entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1877, and for other purposes," approved July 12, 1876.

IX.

As appears by Findings II and III, the total length of road over which the mail has been carried by the claimant is 295.45 miles, of which 263.85 was aided by land grant and 31.6 was not aided. In all payments made to the claimant for said service from January 1, 1882, before which no claim is herein made on account of the statute of limitations, up to September 30, 1887, to which date claim is made, the calculations have been made upon the basis that the length of the road and the respective lengths of the land-grant and non-land-grant portions are as follows:

From January 1, 1882, to June 30, 1884, total, 295.54 miles; land-grant, 270.50; non-land-grant, 25.04 miles (order 9396 of Aug. 16, 1880).

From July 1, 1884, to Sept. 30, 1887: total, 295.45 miles; land-grant, 270.50; non-land-grant, 24.95 miles (order 13179 of August 19, 1884).

The difference between the amounts due under this basis of calculation and the amounts due upon the correct calculation of the respective distances, as above stated, is $863.08, to December 31, 1887, or $819.29, to September 30, 1887.

X.

The claimant did not acquiesce in the deductions made under the orders of August 12, 1885, or in the erroneous calculation of distances.

CONCLUSIONS OF LAW.

And upon the foregoing findings of fact the court decides as conclusions of law:

The claimant should recover the following amounts as set forth in the preceding findings, to wit: $754.72 (Finding VII); $1,643.52 (Finding VII); $1,126.08 (Finding VII); and $819.29 (Finding IX), amounting in the aggregate to $4,343.61, and the counter-claim of the defendant should be dismissed.

27 VIII.—*Opinion.*

NOTT, J., delivered the opinion of the court.

The railroads of the United States considered as mail carriers fall into these classes:

The first are those which have not been aided by the Government in any way, and as to them it is settled by decisions too numerous to be cited that their service is voluntary; that is to say that they are under no obligation to the Government to carry the mail and may decline the service if they will, but that if they do perform it, it must be upon the terms and conditions prescribed by the statutes and regulations of the Post-Office Department or under an express contract within the limitations imposed by law.

The railroads of the second class are popularly known as "land-grant roads;" that is to say, roads which have been aided by grants of public lands upon a condition which, in substantially the same terms, applies to all of them, "That the United States mail shall be transported over said roads, under the direction of the Post-Office Department, at such price as Congress may, by law, direct: *Provided*, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same." As to these roads it is likewise well settled that their service is obligatory; that is to say, they are not at liberty to decline to carry the mails if dissatisfied with the terms prescribed by Congress or the Postmaster-General; and, conversely, their involuntary service is not a waiver of any legal right nor an acquiescence in the terms imposed by the Postmaster-General if in excess of their legal obligations.

The railroads of the third class are roads generally known as belonging to the Pacific Railway system, roads which have been aided by grants of public land and the guaranty of bonds. The conditions upon which these roads were aided are that they shall carry the mails at fair and reasonable rates; that their earnings for service to the Government shall be applied upon the bonds, and that the bonds shall "constitute a first mortgage on the whole line of the railroad," "in consideration of which said bonds may be issued." As to their roads, it has been settled since the decision of the Supreme Court in the Union Pacific R. R. case (104 U. S. R., 662), that all mail service is rendered under and subject only to the original act, and is not subject to the restrictions prescribed by later statutes for other roads.

The railroad in the present case is a continuous line made up in part of land grant and in part of unaided road. It runs from Chattanooga, in Tennessee, to Meridian, in Mississippi. For the portions of it which lie

in Georgia and Tennessee no grant was made. For the portions which lie in Alabama and Mississippi the road was aided.

Since the decision in the case of the United States v. The Kansas Pacific Railway (99 U. S. R., 455), it can not be doubted that the obligation of a railway company extends no further than that portion of its line for which it has received aid.

In the Kansas Pacific case the statute says that the bonds shall "constitute a first mortgage on the whole line of the railroad" "in consideration of which said bonds may be issued." In this case the statute says that the grant shall be "to aid in the construction of the following roads
28 in said State" (Alabama or Mississippi), and that "the mail shall be transported over said roads" "at such price as Congress may by law direct." In the one case the first mortgage created by the statute was limited to the road "in consideration of which" "the bonds were issued;" in the other the grant was declared to be to aid in the construction of roads "in said State," Alabama or Mississippi. In the former case it was held that Congress could not have intended to impose a lien upon a portion of the road which had not constituted a part of the consideration for which the subsidy was given; in this it is equally clear that a grant of land to the State of Alabama or Mississippi, to aid in the construction of roads within that State, can not be construed to extend the conditions of the grant to an unaided portion of a road constructed in another State. In both cases there is in fact one ownership and one line of road; but so far as these relations with the Government are involved there are two owners and two distinct roads. That the two owners are one and the same person, and that the two roads form one transit line, can not affect the question of legal right and liability.

If the case stopped at this point there could be, in the opinion of the court, but one answer to the question whether the unaided portions of the claimant's line are subject to the limitations set upon land-grant roads. In the absence of any other statute it would have to be held that as to the land-grant portions the rate of compensation is that which Congress or the Postmaster-General may have fixed, and as to the other that the claimant was free to enter into an express contract, or, if none existed, to recover in quantum meruit for the service rendered. But as to these latter portions of the road it was unquestionably within the power of Congress to set a limitation upon the price which should be paid for such service, and thereby to leave the public agent, the Postmaster-General, without authority to bind the defendants for any greater price either by entering into an express contract or by accepting the claimant's service without one; and it was equally within the discretion of Congress to fix different rates for different roads or classes of roads, and in so doing to say that if part of a mail-carrier's line was a land-grant road the remainder of the line should be restricted to the same compensation. Such a restriction would not bind the carrier to carry the mail, but it would bind the Postmaster-General not to incur a greater liability, and would be notice to the road at what point his authority to bind the Government by contract terminated.

The questions, therefore, in this case are whether Congress have set a limit to the responsibility of the Government for service rendered by the

unaided portions of the claimant's road, and whether that limit is defined by the first or the thirteenth section of the act 12th July, 1876 (19 Stat. L., p. 78).

The first provision of the act is general and applies in terms to "railroad routes" and to "all railroad companies" (p. 79, sec. 1): "That the Postmaster-General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the first day of July, 1876, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails 10 per cent per annum from the rates fixed and allowed by the first section of an act entitled 'An act making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1874, and for other pur-
29 poses,' approved March 3, 1873, for the transportation of mails on the basis of the average weight."

The second is specific (sec. 13), and is in these words:

"The railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct, shall receive only eighty per centum of the compensation authorized by this act." (S. 13.)

The obscurity of the act, as in all cases of obscurity, whether of statutes or contracts, arises from the omission of a few words. If to the section had been added "upon both portions of the road, whether aided or unaided," we should know what the legislative power intended; and conversely if the section had said "upon so much of a road as was aided by a land grant," there would have been no controversy between the parties.

On the one hand the literal import of the language inclines to a conclusion adverse to the claimant; on the other, the intent of the statute as a whole being to establish one compensation for railway mail carriers in general and a reduction for the land-grant roads specifically it does not seem probable that Congress intended to mingle the two together arbitrarily and xtend the reduction to a portion of a railroad where no legal or equitable round for reduction existed. In the consolidation and extension of our raiload systems it may easily be that a company with a thousand miles of track as absorbed a land-grant road of 50 miles, and it can hardly be supposed hhat Congress intended to reduce the compensation on 950 miles of track o 80 per cent while alongside of it a rival road of a thousand miles is to receive 100 per cent.

In this uncertainty there is an aid that a court may invoke, which is the construction that has been given by the Executive Department charged with the interpretation and administration of the statute. In this case the Postmaster-General in office when the act was passed construed the section as the Supreme Court construed "the whole line of the railroad" in the Kansas Pacific Railroad case (supra); that is to say, he held that where a road had been aided "in whole or in part" the reduction of compensation was to be in whole or in part. A second Postmaster-General came into office, and then a third and a fourth, a fifth and a sixth, and still it remained the settled construction that where the land grant had been in whole or in part the reduction should be in whole or in part. The accounting officers of the Treasury also entertained the same opinion and audited payments on the unaided portions of these roads at the rates pre-

scribed by the first section of the act. For nine years both parties rested content with this interpretation of the law, Congress by passing no act to correct the erroneous construction, if it was erroneous, the railroad companies by voluntarily carrying the mails over the unaided portions of their roads.

In 1885, however, a seventh Postmaster-General gave the reverse construction to the statute; and, moreover, held that the practice of his predecessors was illegal, and that the payments which they had made for past services should be reopened, and the excess be deducted from the future earnings of the roads. Accordingly in this case the Post-Office Department charged the claimants with money which had been allowed and paid to them by the Department under previous Postmasters-General, and the charge rested entirely upon a new construction given by the same Department to the same existing law.

30 Such changes in the construction of a working statute under which men are rendering service and earning compensation through every day of the year are greatly to be deplored, whether the change be for the better or for the worse; and they are especially to be deplored where the new construction will become or can be made retroactive. Every man is bound to know the law and the true interpretation thereof, but where the responsible officers of the Government give a construction to a statute, upon the faith of which a contractor renders a service and receives his pay, can the Government subsequently say that the payment was illegal, and open the transaction, and recover back the money? In the case of disbursing officers it has been held that where payments were made in pursuance of the rulings of accounting officers, the Government, as between the disbursing officer and itself, is estopped from setting up that the payments were illegal. Hartson's Case (21 C. Cls. R. 451). Is there any difference in principle between the case of a disbursing officer who paid out money on the faith of the Treasury Department's rulings and of a carrier who carried the mails on the faith of the Postmaster-General's construction of a statute? Ordinarily the construction given to a statute by a Department is favorable to the Government; that is to say, favorable to itself and unfavorable to the other party, who is seeking to draw upon its limited appropriations. Yet, where there is a foundation of ambiguity to stand upon the courts have not hesitated to say that the contemporaneous construction by executive officers called upon to interpret a statute, and appointed to carry it into effect, is entitled to great respect, and ought not to be overruled without cogent reasons, although a different construction might be given to the statute if the question were altogether new. (Brown v. The United States, 113 U. S. R., 568.)

Upon the authority of that case the court is of the opinion that the doubtful terms of the statute should be resolved in favor of the claimant.

The judgment of the court is that the claimant recover the sum of $4,343.61, and that the counter claim of the defendants be dismissed.

31 IX.—*Final judgment.*

At a Court of Claims held in the city of Washington, D. C., on the 10th day of February, 1890, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises both for and against the Government and the claimant, find upon the whole case that there is

due to the claimant the sum of $4,343.61, and do order, adjudge, and decree that the said Alabama Great Southern Railroad Company do have and recover of and from the United States the sum of four thousand three hundred and forty-three $\frac{61}{100}$ dollars ($4,343.61), and that the counter claim of the defendants be dismissed.

32 X.—*Application of defendants for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 10th day of February, 1890, in favor of claimant, the defendants, by their Attorney-General, on the 1st day of May, 1890, make application for, and give notice of, an appeal to the Supreme Court of the United States.

JOHN B. COTTON,
Assistant Attorney-General.

Filed and allowed in open court May 1, 1890.

WILLIAM A. RICHARDSON,
Chief Justice.

35 In the Court of Claims.

THE ALABAMA GREAT SOUTHERN Railroad Company *vs.* THE UNITED STATES. } No. 15868.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusions of law thereon, of the opinion of the court, of the final judgment of the court, of the application of the defendants for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 18th day of August, A. D. 1890.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk, Court of Claims.

(Indorsement on cover:) No. 749. The United States, appellant, *vs.* The Alabama Great Southern Railroad Company. Court of Claims. Filed August 27, 1890.

Supreme Court U. S.
FILED.
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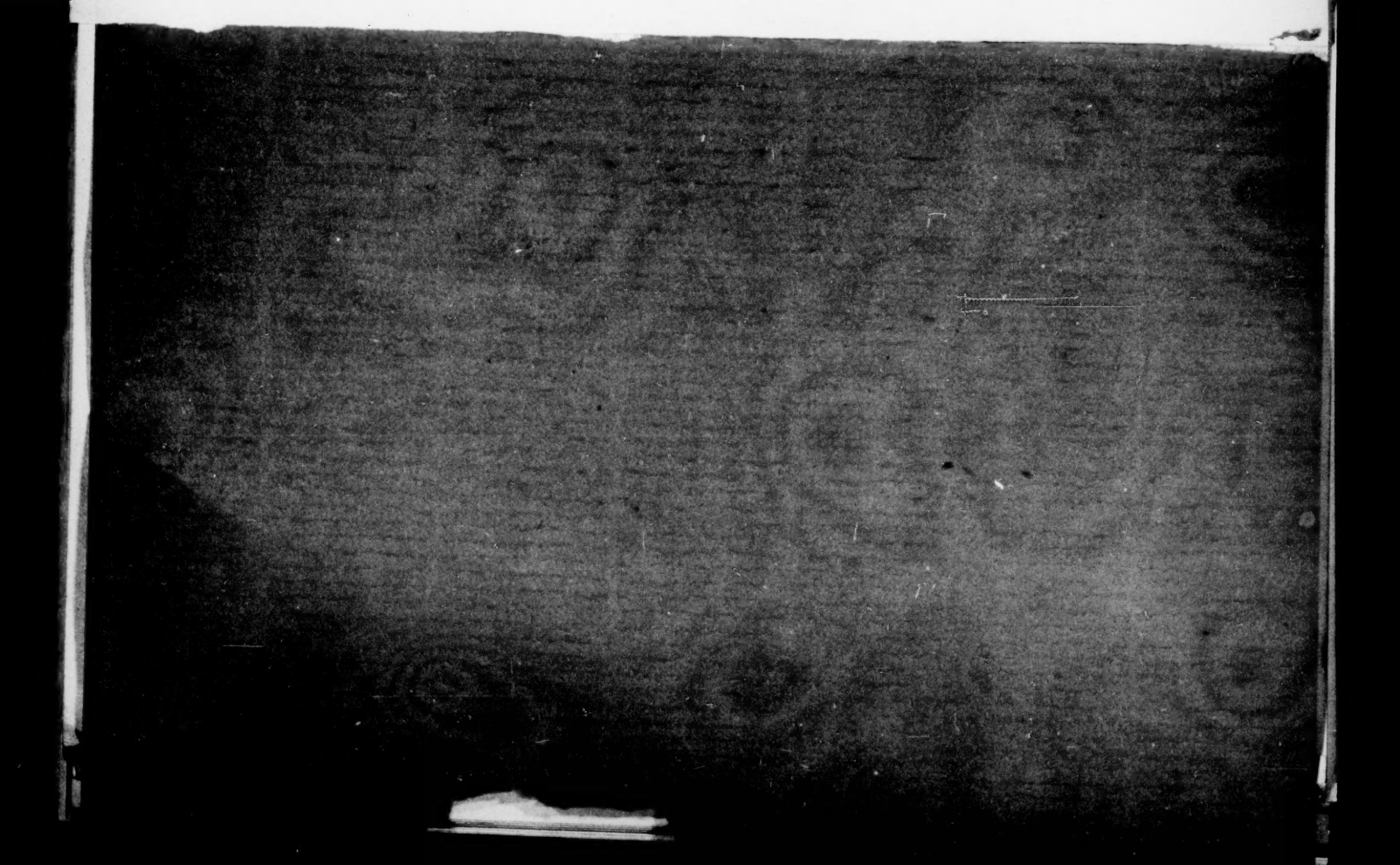
In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, APPELLANT,
vs.
THE ALABAMA GREAT SOUTHERN Railroad Company.
No. 749.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT.



In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, APPELLANT,
vs.
THE ALABAMA GREAT SOUTHERN Railroad Company. } No. 749.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT.

STATEMENT.

This case comes up from the Court of Claims, the original petition of the claimant, the Alabama Great Southern Railroad Company, having been filed in that court December 19, 1887.

The amended petition was filed Janury 27, 1888 (Rec., pp. 5 to 10), and general traverse thereto was filed November 24, 1888. A counterclaim was also filed by the United States May 2, 1889 (p. 10), to which a replication was filed November 29, 1889 (p. 11).

The amended petition represents that the petitioner is a corporation organized under the laws of the State of Alabama, and operates a railroad from Chattanooga, in the State of Tennessee, through the States of Georgia and Alabama, to Meridian, in the State of Mississippi; that the total length of said road is 295.45 miles, of which petitioner owns 289.75 miles, and operates under lease 5.70 miles.

That the construction of 263.85 miles of said road, lying within the boundaries of the States of Alabama and Mississippi was aided by grants of land made by the United States under granting acts dated in 1856 (and hereafter more fully presented).

That the 31.60 miles of railroad, extending from the boundary line between the States of Georgia and Alabama to Chattanooga, in the State of Tennessee, was in nowise aided by the United States.

That in all statements of distances adopted for the purposes of computation of amounts of compensation due claimant for mail carriage previous to August 12, 1885, it was assumed that the whole length of the road was 295 miles, of which the aided portion was 270.50 miles, and the unaided portion 24.50 miles. Upon such statements payments were made by the Post-Office Department to the claimant, from time to time, in accordance with the rate allowed for the time being, and were received by the claimant.

That by an order dated August 12, 1885, the Second Assistant Postmaster-General modified the several orders made in the premises, running back to April 13, 1877, inclusive, and assuming to cover payments for service

from July 1, 1876, so as to declare the total number of miles of service to be 295 miles, and that 289.50 thereof should be considered land-grant road and only 5.50 thereof non-aided road, and the account between the claimant and the Government was restated accordingly, and the amount of the difference was charged against the claimant and deducted from the subsequent earnings of said claimant in performing mail service. Although the contention in this case is affected in a small degree by a minor difference in, or a correction of, actual measurements of the line of the road, the real question in the case, and the only one deemed necessary to present to this court, is whether, under the statutes and the decisions, any portion of the line of the claimant's road which lies northeast from the boundary line of the State of Alabama and within the States of Georgia or Tennessee is to be considered and treated as land-grant road.

The leased portion of 5.7 seems to be conceded to be a nonland-grant road. The line of road from the Georgia-Alabama boundary line to Meridian post-office, 263.85 miles, is conceded to be land-grant road.

The second finding of the Court of Claims (p. 12) gives the total of the road as 295.45 miles, and the contention here must be limited to 25.90 miles, extending northeasterly from the Georgia-Alabama boundary line.

It is admitted that claimant's claims are cut off January 1, 1882, by the statute of limitations.

The amount of the judgment given below represents, substantially, the difference in amount of compensation lawfully going to the claimant under the rates existing

from time to time under a construction holding the controverted portion of the line to be nonland-grant road, as against the construction under which it was held to be land-grant road.

If this disputed portion of the road is to be regarded, for the purposes of this suit, as land-grant road, then the judgment should be reversed.

ASSIGNMENTS OF ERROR.

(1) The Court of Claims erred in holding that 31.6 miles of claimant's railroad should be considered as nonland-grant road, and erred in holding claimant's road within the State of Georgia as well as within the State of Tennessee to be nonland-grant road, and to be free from the requirements of the statutes of the United States applicable to the land-grant and aided railroads as to the carrying of mails and as to compensation for such transportation.

(2) The court below erred in not holding claimant's railroad, except 5.50 miles thereof (Chattanooga to Wauhatchie), subject to the control and deductions and rates applicable to land-grant and aided railroads under the statutes of the United States.

(3) The court erred in adjudging that the claimant recover from the United States the sum of $4,343.61, and also erred in dismissing the counterclaim made by the defendant below against the claimant.

POINTS.

I.

CONGRESSIONAL LEGISLATION.

By the act of June 3, 1856 (11 Stat., 17), there is —

> Granted to the State of Alabama for the purpose of aiding in the construction of railroads from the Tennessee River at or near Gunter's Landing to Gadsden, on the Coosa River; from Gadsden to connect with the Georgia and Tennessee line of railroads, through Chattanooga, Wills, and Lookout Valleys; and from Elyton to the Tennessee River at or near Beard's Bluff, Alabama, every alternate section of land designated by odd numbers, &c.

It is further provided that the land so located shall in no case be farther than 15 miles from the road on account of which it shall be selected, and also that the granted lands "shall be exclusively applied in the construction of that road, for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever."

By section 3 of said act it is enacted:

> That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other, and the said railroads shall be and remain public highways for the use of the Government of the United States, free from all toll or other charge upon the transportation of any property or troops of the United States.

And by section 5 it is enacted:

> That the United States mail shall be transported over said roads, under the direction of the Post-Office Department, at such price as Congress, may by law, direct: *Provided*, That until such price is fixed by law the Postmaster-General shall have the power to determine the same.

By the act of August 11, 1856 (11 Stat., 30), there is—

> Granted to the State of Mississippi, for the purpose of aiding in the construction of railroads from Jackson to the line between the State of Mississippi and the State of Alabama; from Tuscaloosa to the Mobile Railroad within Mississippi, and from Brandon to the Gulf of Mexico, every alternate section of land designated by even numbers, &c.

The same provisions and limitations as to the location and the application of the lands granted are contained in this act as in the act of June 3, 1856, and above cited.

And sections 3 and 5 of the act of August 11, 1856, are respectively, in substance and effect, the same as the corresponding sections of the act of June 3, 1856.

By the act making appropriations for the service of the Post-Office Department, passed July 12, 1876 (19 Stat., 78), the Postmaster-General is directed to readjust the compensation to be paid from July 1, 1876, for transportations of mails on railroad routes by reducing the rate for transportation to railroad companies 10 per cent per annum from the rates fixed and allowed by section 1 of the corresponding act passed March 3, 1873, for the transportation of mails on the basis of the average weight.

And section 13 of the act of July 12, 1876 (p. 82), reads as follows:

> SEC. 13. That railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct shall receive only eighty per centum of the compensation authorized by this act.

II.

Under the foregoing legislation the Second Assistant Postmaster-General made the following order:

> POST-OFFICE DEPARTMENT,
> OFFICE OF THE SECOND
> ASSISTANT POSTMASTER GENERAL,
> RAILWAY ADJUSTMENT DIVISION,
> *Washington, D. C., August* 12, 1885.
>
> SIR: An order has been made relative to the part of route 17015 paid for as land grant, of which the following is a copy:
>
> Modify order of April 13, 1877, No. 1747, so as to state the miles of land grant at 289.50 miles instead of 270.50 miles, and from July 1, 1876, to June 30, 1878, pay the Alabama and Chattanooga R. R. Co., for service between Chattanooga and Meridian, at the rate of $10,669.50 per annum, being $45 per mile for 5.50 miles, Chattanooga to Wauhatchie, and $36 per mile for 289.50 miles, Wauhatchie to Meridian, land grant. 2d. Modify order of July 23, 1878, No. 5669, so as to pay the same company between the same points from July 1, 1878, to June 30, 1879, at the rate of $10,136.02 per annum, being $42.75 per mile for 5.50 miles, Chattanooga to Wauhatchie, not land grant, and $34.20 per mile for 289.50 miles, Wau-

hatchie to Meridian, land grant. 3rd. Modify order of October 10, 1879, No. 10404, so as to pay the same company for service between the same points from July 1, 1879, to June 30, 1880, at the rate of $15,610.08 per annum, being $65.84 per mile for 5.50 miles, Chattanooga to Wauhatchie, not land grant, and $52.67 per mile for 289.50 miles, Wauhatchie to Meridian, land grant.

Modify order of August 16, 1880, No. 9396, so as to pay the Alabama and Great Southern R. R. Co., for service between Chattanooga and Meridian, from July 1, 1880, to June 30, 1884, at the rate of $17,882.34 per annum, being $75.24 per mile for 6.04 miles, Chattanooga to Wauhatchie, not land grant, and $60.20 per mile for 289.50 miles, Wauhatchie to Meridian, land grant.

Modify order of August 19, 1884, No. 13179, so as to pay the Alabama and Great Southern R. R. Co., for service between Chattanooga and Meridian from July 1, 1884, to June 30, 1888, at the rate of $31,276.46 per annum, being $131.67 per mile for 5.95 miles, Chattanooga to Wauhatchie, not land grant, and $105.33 per mile for 289.50 miles, Wauhatchie to Meridian, land grant, all in accordance with the distance ascertained to be subject to the conditions of the granting act.

Very respectfully,

(Signed) A. Leo Knott,
Second Asst. P. M. General.

III.

THE STRICT LETTER OF THE LAW JUSTIFIES AND REQUIRES THE DEDUCTION AS MADE.

Claimant's complaint is based upon the fact that the Second Assistant Postmaster-General reduced the com-

pensation upon all of the line owned by the claimant, under section 13 of the act of July 12, 1876, to 80 per cent of the compensation that would have been authorized if the road had not been a land-grant road.

By section 5 of each of the granting acts it is enacted that mail shall be transported at such price as Congress may, by law, direct. The acceptance of the grant is an acceptance of the condition.

By section 13 of the act of 1876, Congress directed that the reduction to 80 per cent shall be made as to "railroad companies whose railroad was constructed in whole *or in part* by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct."

No one disputes or questions that the railroad line of claimant was constructed in part, and in the main, by land grants made by Congress, on the condition specified.

It therefore follows, of necessity, that claimant has no standing to make any contention in the premises against the 20 per cent deduction made because of the act of Congress of 1876, and because of the land grants it had received with the condition attached thereto.

It is understood that the opinion below (fol. 29) admits that the literal import of the language inclines to a conclusion adverse to the claimant.

The court then seeks to strengthen its position by an imagined case, or combination of cases, saying that "in the consolidation and extension of our railroad systems it may easily be that a company with a thousand miles of track has absorbed a land grant of 50 miles, and it can

hardly be supposed that Congress intended to reduce the compensation on 950 miles of track to 80 per cent, while alongside of it a rival road of a thousand miles is to receive 100 per cent."

It can not be claimed that the courts may change the laws because cases of hardship may arise under enactments as they are left by Congress.

As no such cases as those suggested above have existed it may be fairly inferred that both railroads and Congress may be trusted to prevent the existence of the unreasonable consequences supposed by the court below.

It must be conceded that the language employed by Congress is neither ambiguous nor obscure, and also that its fair and natural import is to render this whole line from Wauhatchie (at the least) to Meridian a land-grant road, subject to the 20 per cent reduction as to mail compensation.

It is respectfully submitted that an exercise of that function which is sometimes designated "judicial legislation" is not necessary to avoid injustice.

IV.

THE OPINION OF ATTORNEY-GENERAL ACKERMAN.

In 1871 Mr. Attorney-General Ackerman had under consideration an analogous question, arising out of a land grant, and rendered his opinion (13 Opin. Atty. Gen., 536) as follows:

> DEPARTMENT OF JUSTICE,
> *November* 21, 1871.
>
> SIR: Your letter of the 5th ultimo presents this question: To what extent a railroad, to aid in the

construction of which Congress has donated portions of the public domain, can be considered a public highway for the free use of the Government of the United States in the transportation of its troops and property; whether the whole road should be so considered, or only that portion along which the company have actually selected lands.

The question now arises under the act of September 20, 1850, granting land in aid of the construction of a railroad from Chicago to Mobile, which in the seventh section provides that "the said railroad and branches shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States" (9 Stat., 467).

I am of opinion that a road which receives any aid under such a grant becomes a public highway, for the purposes aforesaid, for its whole length. There is nothing in the language of the act to confine the character of a public highway to that portion of the road along which the granted lands may happen to lie. The law does not require that the proceeds of the lands shall be particularly applied to the construction of the adjacent parts of the road. But they go into the general funds of the road, and are applied indiscriminately to the whole work. The road is a unit, and any aid to it, by grant, subjects the whole of it to the condition which accompanies the grant.

Under any other rule, it might happen that a road would be broken up into short and irregular divisions, alternately open and closed to the free use of the Government, and nothing could be more useless than a right to transportation subject to such interruptions.

Where there is no essential variation in the terms of the grant from the provisions above quoted, the rule which I have here given is applicable. And this answers, with as much explicitness as is possible in so general a statement, your request for a rule which shall enable your Department properly to fix the termini of the land-grant roads, or land-grant portions of roads, subject to the conditions of free use for transportation.

Very respectfully, your obedient servant,

A. T. ACKERMAN.

Hon. WILLIAM W. BELKNAP,
Secretary of War.

As this doctrine has not been overruled, but remains recognized law, it is respectfully submitted to the consideration of the court, first, upon its merits; and second, as an instance of practical construction.

V.

STATE ACTION SHOWS A PUBLIC PURPOSE TO SECURE AND ESTABLISH A CONSOLIDATED THROUGH LINE.

(*a*) October 30, 1837, the State of Tennessee (Acts of 1837–'38, p. 41) passed "An act to incorporate the Lookout Railroad Company," for the purpose of the building and keeping in repair a railroad from Ross Landing, on the Tennessee River, to the southern boundary of the State of Tennessee, to unite with the Western and Atlantic Railroad of the State of Georgia.

And said State, January 24, 1846 (Acts 1845–'46, p. 175), amended the above-named act and continued the

powers granted thereunder, and provided for the extending of the railroad of the Lookout Railroad Company from Chattanooga into the State of Georgia, if necessary, in order to reach the Western and Atlantic Railroad of the State of Georgia.

It may be said that the Congressional acts of 1856 are in line with the acts and purposes, long existing, of creating a through railroad route from Chattanooga southward.

By sections 1, 2, and 3 of the act of the general assembly of the State of Georgia, passed January 31, 1854 (Georgia Laws, 1853–'54, p. 464), encouragement is given for the Wills Valley Railroad Company (of Alabama) to extend its contemplated road from Alabama to some point on the Nashville and Chattanooga Railroad, in the county of Dade and State of Georgia.

The general assembly of the State of Tennessee, by its act of February 28, 1854 (Laws of Tennessee, 1853–'54, p. 698), enacts:

> That the Northeastern and Southwestern Railroad Company of Alabama, or the Wills Valley Railroad Company of Alabama, or whichever of the two shall first locate and in good faith commence the construction of the road, are hereby authorized and permitted to extend their road from the southern line of this State in Lookout Valley to a connection with the Nashville and Chattanooga Railroad at Chattanooga or elsewhere in this State, with all the rights, powers, privileges, and franchises, so far as the same are applicable, which said Nashville and Chattanooga Company have by the terms of an act passed 11th December, 1845, entitled "An act to incorporate the

Nashville and Chattanooga Railroad Company," and subject to the liabilities and restrictions therein imposed.

The efforts of the several States to establish and secure a line of railroad that would accommodate the needs of the States in the transportation of mails and otherwise are manifest.

The statutes of the States of Georgia and Tennessee show the purpose of the land grants.

The object sought by the grant was not to give more railroad mileage to the States of Alabama and Mississippi or to secure a line across the northwestern corner of Georgia; it was to connect the system of railroads of central Mississippi and that of northeastern Alabama with that of Lookout Valley, eastern Tennessee and Virginia, and the connected lines.

(*b*) The line of railroad distinctly involved in this suit, as declared by the findings of the Court of Claims, is made up of a continuous line running from Chattanooga, in Tennessee, to Meridian, in Mississippi.

The statutes of the States of Tennessee and Georgia, looking to a line of railroad running into four States, practically as now existing, were, of course, well known at the time of the passage of the Congressional acts of 1856, and it is fair to say that the purpose of those acts of Congress was to form a line of road from Chattanooga, Lookout Valley (and the lines coming in from the north), and running across northwestern Georgia, Alabama, and into Mississippi, so as to connect the then existing northeastern and southwestern systems, and to form

a line from Chattanooga to Meridian with northern and southern connections.

(*c*) If the national grant was made to create *a line* that in fact ran northeast from the Alabama-Georgia boundary line, and if that whole line is now owned, and has since January 1, 1882, been owned by the claimant, it is plain that the whole of this line and every part thereof is a product in part of this land grant, and that it falls, and should be held to fall, under the condition that the mails shall be transported over this whole line "at such price as Congress may, by law, direct."

(*d*) The act of June 3, 1856, granting lands to Alabama, by section 1 grants lands to aid in the construction of a railroad "from the Tennessee River, at or near Gunter's Landing, to Gadsden, on the Coosa River; from Gadsden to connect with the Georgia and Tennessee, and Tennessee line of railroads through Chattanooga, Wills, and Lookout valleys."

Section 6 declares that a grant of lands shall be made to said State to aid in the construction of the Memphis and Charleston, the Girard and Mobile, the Northeastern and Southwestern Railroad from near Gadsden to some point in the Alabama and Mississippi State line in the direction of the Mobile and Ohio Railroad with a view to connect therewith.

Thus we have the purpose of the grant—not to create a road along the line of the granted sections merely, but among other lines; to create a line from the Lookout Valley in Tennessee to the Mobile and Ohio Railroad, or, in other words, from Chattanooga to Meridian.

VI.

MONEYS IMPROPERLY PAID TO CLAIMANT WERE PROPERLY WITHHELD ON DISCOVERY OF THE MISTAKE.

It is not deemed that the appellant is called upon to make any argument upon the point of the right of the Government, through its Assistant Postmaster-General, to obtain back money improperly obtained by the claimant.

By section 4057 of the Revised Statutes the money might be collected back by suit if paid by mistake. It is as proper to withhold the money as to recover it. One servant of the Government is not allowed to profit, at the public cost, by the laches or incapacity of another servant.

If the public money was erroneously paid to the claimant, and the claimant received it without right, such claimant has no ground of complaint when compelled to return that which it was never entitled to receive.

A. X. PARKER,
Assistant Attorney-General.

Office Supreme Court U. S.
FILED.
JAN. 8 1892
JAMES H. MCKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

Term No. 749.

THE UNITED STATES, Appellant,

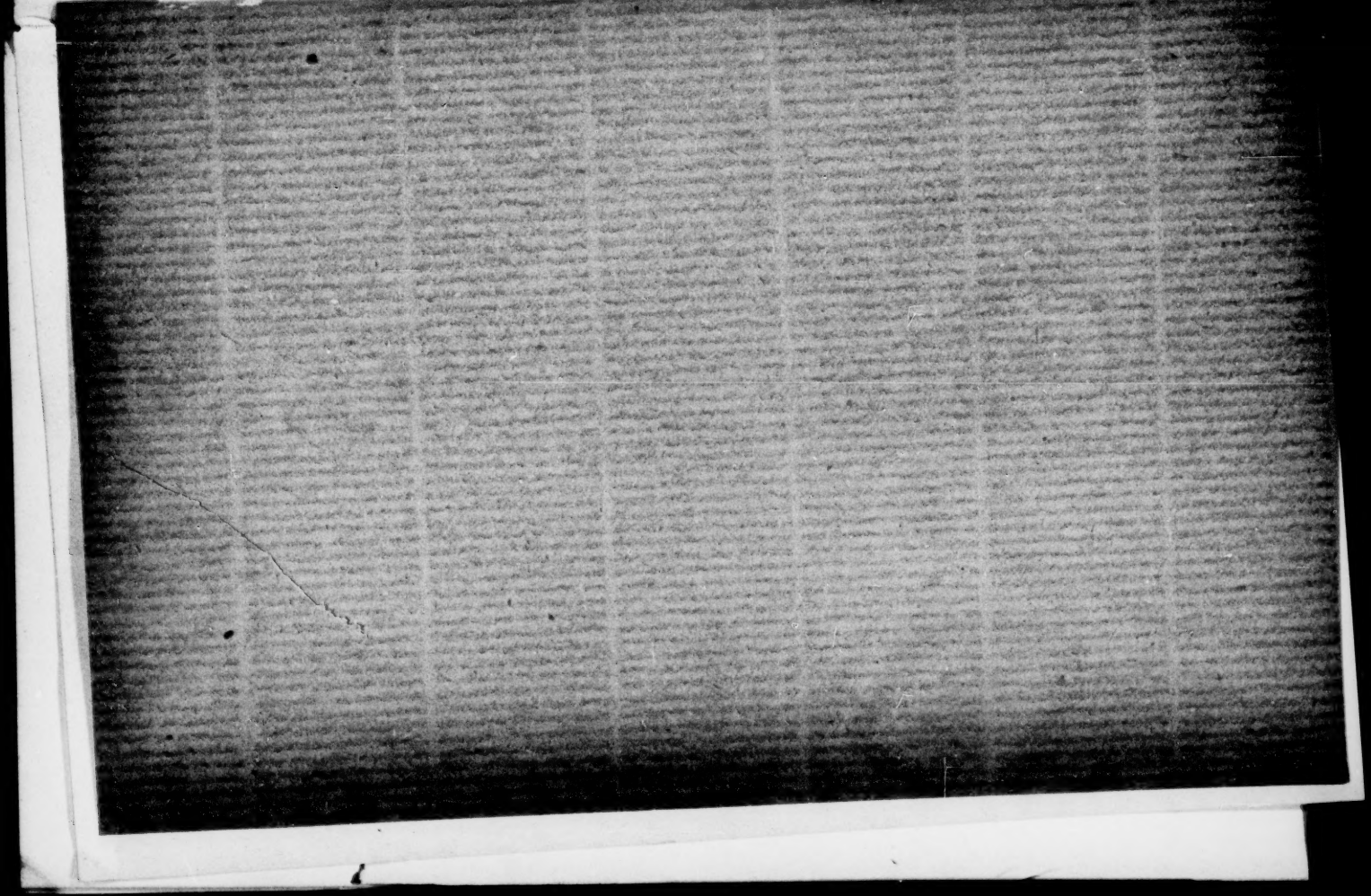
vs.

THE ALABAMA GREAT SOUTHERN RAILROAD CO.

Brief and Argument for Appellee.

M. D. BRAINARD,
CHARLES KING,
WILLIAM B. KING,
Attorneys and Counsel for Appellee.

H. L. McQUEEN, PRINTER.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, Appellant,
vs.
THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY. } Term No. 749.

Appeal from the Court of Claims.

BRIEF AND ARGUMENT FOR APPELLEES.

Summary of Facts.

The facts found by the Court of Claims may be summarized as follows:

The appellee (the claimant in the Court of Claims), operates a railroad running southwest from Chattanooga, Tenn., to the southern boundary of Tennessee, across the northwestern corner of Georgia, across the State of Alabama, into Mississippi, to Meridian. The road is 295.45 miles long. (Findings I and II, rec. pp. 11, 12.) By the acts of June 3 and August 1, 1856 (11 Stat., 17 and 30), Congress granted public lands to the States of Alabama and Mississippi to aid in the construction of certain railroads in those States. That part of the road now composing the line of this company lying in the States of Alabama and Mississippi, 263.85 miles, was aided by these grants. No land grant aided the construction of that part of the road in Tennessee and Georgia. Of the

part in Tennessee (7.3 miles), 5.7 miles, from Chattanooga to Wauhatchie, is operated under lease. From Wauhatchie to the boundary line between Georgia and Alabama, the end of the non-land grant portion, is 25.9 miles, making a total length of non-land-grant road of 31.6 miles. (Findings II, III, rec. p. 12.)

The United States mail has been carried over this railroad since prior to 1876;—from 1876 to July 1, 1880, by the Alabama and Chattanooga Railroad Company, and since the latter date, by the appellee.

The postal appropriation act approved July 12, 1876 (19 Stat., 78), made the following provision (page 82):

"SEC. 13. That railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct shall receive only eighty per centum of the compensation authorized by this act."

In applying this law to the account of the Alabama and Chattanooga Railroad Company the Postmaster-General decided as a matter of law that the statute required that the reduced rate should be paid for carrying the mails upon that part of its road which had been aided by land grant and the full rate for the rest of the road. He also decided as a matter of fact that the total length of road was 295 miles, and that of this 270.50 had been aided by land grant and 24.50 had not been so aided. The Alabama and Chattanooga Railroad Company was therefore paid upon this basis, as stated in Paragraph IV of the amended petition and Finding IV (record, pp. 6, 12, 13), for their mail service from July 1, 1876, to June 30, 1880. At the close of the fiscal year ending June 30, 1880, this road having passed into the hands of the appellee, payments to the Alabama and Chattanooga Railroad Company ceased. The same rules of payment were

applied to the mail service rendered by the appellee from July 1, 1880, to June 30, 1885. (See Paragraph V of the amended petition and Finding V, rec. pp. 6, 13, 14.)

This contemporary construction of the act of July 12, 1876, under which all these payments were made, continued to be regarded by the Department as the correct interpretation of the law for nine years, under six Postmasters-General. (See opinion of court below, rec. pp. 18, 19.)

In August, 1885, the Postmaster-General then in office reviewed the act of July 12, 1876, and then decided as a matter of law that it required the payment of the reduced rate to the appellee over the whole of its own line (excluding the 5.7 miles operated under lease). No reasons were assigned showing why he differed from his predecessors in his view of the law, nor was any difference of fact asserted. (Finding VIII, rec. p. 15.) He gave to his opinion two effects, one prospective, the other retroactive. He ordered (1) that all future payments should be made on the reduced basis, and (2) that an account should be taken of all payments made by his predecessors since July 1, 1876, for mail service over this road in excess of the rate which he considered proper, and that this sum should be withheld from sums falling due to the claimant. The fact that the payments prior to July 1, 1880, had been made to the Alabama and Chattanooga Railroad Company, and not to the claimant, made no difference in the action of the Postmaster-General. The sums paid to both companies were alike withheld from this appellee.

The Appellee's Points of Law.

The appellee now asserts the following positions:

1. That the original construction of the law was correct.

2. That, if incorrect, payments in accordance therewith can not be now recovered back.

3. That even if payments to the appellee under this construction can be recovered back, payments to the Alabama and Chattanooga Railroad Company can not be recovered back from the appellee.

Under these three propositions it makes the following claims:

1. For amounts paid to the Alabama and Chattanooga Railroad Company and subsequently withheld from the appellee. (Paragraphs IV and VIII of amended petition and Finding VII, record, pp. 6, 7, 8, 15.)

2. For amounts paid to the appellee and subsequently withheld. (Paragraphs V and VIII of amended petition and Finding VII, record, pp. 6, 7, 8, 15.)

3. For differences between the amounts paid under the new construction of the law since July 1, 1885, and the amounts due under the old construction. (Paragraph IX of amended petition and Finding VII, record, pp. 8, 15.)

The court below sustained all these contentions and rendered judgment upon all these claims.

Besides these another claim is made (Paragraph XI of amended petition, Finding IX, record, pp. 9, 15), but it will simplify the consideration of the case to leave that until the others have been fully discussed.

Argument.

Two questions of law arise in this case:

1. Was the construction of the portion of this road in Georgia and Tennessee aided by a land grant?

The appellant so asserts; the court below say otherwise.

2. If not so aided, does the act of July 12, 1876, require a deduction of mail pay on the not aided portion?

The appellant so maintains, while the Court of Claims held that the deduction is required over the aided portion alone.

Those questions will be discussed in order:

I. WAS THE ROAD IN GEORGIA AND TENNESSEE CONSTRUCTED BY THE AID OF A LAND GRANT?

The acts under which the grants appearing in this case were made to the States of Alabama and Mississippi are identical in their provisions. The act of June 3, 1856 (11 Stat., 17), was entitled "An act granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of certain railroads IN SAID STATE."

The object of this act is clearly stated in this title; its purposes are limited to the construction of railroads within the State of Alabama. All the provisions of the act accord with this title.

By the first section a grant is made in aid of that part of the road now owned by the claimant which extends northeast from Gadsden, in these words:

"That there be, and is hereby, granted to the State of Alabama, for the purpose of aiding in the construction of railroads, * * * from Gadsden to connect with the Georgia and Tennessee and Tennessee line of railroads, through Chattooga, Wills, and Lookout Valleys, * * * every alternate section of land designated by odd numbers, for six sections in width on each side of said roads."

It is in regard to the road connecting with this road that the pending controversy has arisen.

There is no indication of a grant to aid the construction of the connecting line in Georgia; the grant is to aid the construction of a railroad in Alabama to connect with a road in Georgia, and this grant is of land "on each side

of said road." The use of the words "said road" shows that the road constructed by aid of the grant is the same as the road by the side of which the grant lies, viz., the road in Alabama. The Governor of Alabama was to certify (Sec. 4) to the completion of each part of the road. There is no grant in Georgia; consequently the Georgia road is not aided. The other words showing the road's connections are merely descriptive, fixing the road to be aided. Throughout the act no further reference is made to roads out of the State of Alabama than as geographical fixtures or means of connecting the roads which are the subject of the act with points in other States. The only roads to be aided by this act are the specific roads lying within the State of Alabama.

The point of connection, described in the Act of 1856, with the Georgia railroad, was the Alabama and Georgia State line, where the Alabama road ended and the Georgia road commenced; and the point of connection with the Tennessee road was at the Tennessee and Georgia State line, where the Tennessee road commenced and the Georgia road ended.

To prevent the funds realized from the sale of the lands granted by the act from being diverted from their specific application to the railroad in Alabama for which they were granted, it was further enacted:

"*Provided further*, That the lands hereby granted for and on account of said roads, severally, shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever."

The grant was *to* Alabama for the construction of the railroad *in* Alabama, and was expressly limited to the use of the Alabama part of the road; it would have been

directly against a specific provision of the act, had the construction of that part of claimant's road which lies in Georgia and Tennessee been built or aided in building by the funds derived from the grant.

If the intention of Congress had been to grant lands *in* Alabama *to* Alabama to aid in the construction of the railroad lying in Georgia and Tennessee, so as to be equal to six sections per mile for the whole length of the road, an enlargement of the grant in Alabama beyond six sections in width per mile on each side of the road would have been necessary in order to supply six sections of land in Alabama for the 31 miles of road in Georgia and Tennessee, or 96 sections of 640 acres each, making 119,040 acres additional, for there were no public lands in Georgia and Tennessee. The Secretary of the Interior considered the question of the right of this railroad to such an enlargement of its grant and decided that the grant was limited strictly to that part of the road in Alabama. (See Vol. 3, Land Decisions, published by the Interior Department, pp. 242–246.) The part of the railroad in Georgia and Tennessee received no land grant, and is, therefore, not land-grant railroad, and is not subject to the burdens of a land-grant railroad.

There is nothing in this grant which evidences an intention by Congress to discriminate against this railroad and to compel this company to build its road for a compensation of less than six sections per mile, but a contrary intent is shown by the language of the act.

Both before and after this grant was made the uniform measure of aid to land-grant railroads was six full sections for each mile of railroad constructed.

Grants to Illinois, September 20, 1850, 9 Stat., 466
Grants to Mississippi, September 20, 1850, 9 Stat., 466.

Grants to Mississippi, August 11, 1856, 11 Stat., 30.
Grants to Florida, May 17, 1856, 11 Stat., 15.
Grants to Louisiana, June 3, 1856, 11 Stat., 18.
Grants to Arkansas, February 9, 1853, 10 Stat., 155.
Grants to Missouri, June 10, 1852, 10 Stat., 8.
Grants to Iowa, May 15, 1856, 11 Stat., 9.
Grants to Wisconsin, June 3, 1856, 11 Stat., 20.
Grants to Michigan, June 3, 1856, 11 Stat., 21.
Grants to Minnesota, March 3, 1857, 11 Stat., 195.

This measure of aid was found to be insufficient to construct the roads, and the land grants were in many instances enlarged by subsequent legislation.

Act July 28, 1866, 14 Stat., 338.
Act July 2, 1864, 13 Stat., 96.
Act July 7, 1864, 13 Stat., 119.
Act March 3, 1865, 12 Stat., 520.
Act May 5, 1864, 13 Stat., 66.
Act March 3, 1865, 13 Stat., 526.
Act May 12, 1864, 13 Stat., 74.

In grants of a later date the land grants are in many cases much enlarged.

Act July 4, 1866, 14 Stat., 87.
Act March 3, 1863, 12 Stat., 772.
Act July 25, 1866, 14 Stat., 236.
Act July 23, 1866, 14 Stat., 210.
Pacific Railroad acts, 12 Stat., 489; 13 *ibid.*, 356.

In the light of these facts it can not be held that it was the purpose of Congress to force this railroad to build the 31 miles of road in Georgia and Tennessee *as* a land-grant railroad without the equivalent compensation *in land;* or can it be held that the grant of but six sections per mile

for the road in Alabama was also intended by Congress as land grant to the road outside of the State.

That part of this railroad in Georgia and Tennessee did not even receive its charter and right of way from the United States, much less a land grant.

The Tennessee part of the road was incorporated by an act of the Legislature of Tennessee approved February 28, 1854. (Acts Tennessee, 1854, p. 698.)

That part of the road in Georgia was incorporated by an act of the Legislature of Georgia approved January 31, 1854. (Acts Georgia, 1854, p. 464.)

The fact that the United States owned no lands in Georgia and Tennessee, and therefore had no lands to grant coterminous with this 31 miles of railroad in those States, and the further fact that no additional grant was made to Alabama *in* Alabama beyond the ordinary six sections per mile, shows conclusively that this 31 miles is not land-grant railroad.

It may, therefore, be taken as settled that the only part of the claimant's railroad, the construction of which was aided by a land grant was the part in Alabama and Mississippi.

We are now brought to the second question at issue in the case:

II. Does the act of 1876 require a deduction in mail pay on the not aided portion of the road?

The appellant contends that the claimant's mail pay over its whole road must be reduced because a part of its road was aided by a land grant.

THE APPELLANT'S POSITION IS UNREASONABLE.

Such a position would lead to the most unreasonable results. If a company owns a thousand miles of road and ten miles of this was aided by a grant, the deduction,

the appellant contends, is to be made on the whole road. Whatever the proportion of aid, the burden extends over the entire property. Such an unequal result could hardly have been the intention of Congress. It is far more reasonable to hold that Congress meant the burden to be imposed in proportion to the privileges granted.

The court below say (rec., p. 18):

"In the consolidation and extension of our railroad systems it may easily be that a company with a thousand miles of track has absorbed a land-grant road of 50 miles, and it can hardly be supposed that Congress intended to reduce the compensation on 950 miles of track to 80 per cent., while alongside of it a rival road of a thousand miles is to receive 100 per cent."

THE CONTEMPORARY CONSTRUCTION.

For nine years from its passage the construction of that act in the Executive Departments in its application to this case was as the court below has held, and payments were made quarterly in accordance therewith. The law received over thirty identical practical constructions. This construction was constantly open to the rebuke of Congress, had it been contrary to the true legislative intent. In the case of Brown *v.* The United States (113 U. S., 568, 571) this court quote and cite many cases, beginning with the year 1827, showing the very great weight accorded to contemporaneous construction of laws by executive officers. The following language of the court in United States *v.* Moore (95 U. S., 760, 763) is there quoted with approval:

"The construction given to a statute by those charged with the duty of executing it * * * ought not to be overruled without cogent reasons. * * * The officers concerned are usually able men and masters of the subject. Not infrequently they are the draughtsmen of the laws they are afterward called upon to interpret."

The cases are so fully referred to in Brown *v.* The United States, above cited, that it is unnecessary to name them here.

The shifting interpretation of statutes under personal or political changes is one of the greatest evils of executive administration. The judiciary has always been on the side of stability, especially where contract relations are involved.

In the case at bar, the construction had been long settled, and should not be overturned unless shown to be clearly erroneous. The burden is upon those who find another meaning in the statute to show their correctness beyond a reasonable doubt.

But if this question be carefully examined it clearly appears that this contemporary construction of the act of July 12, 1876, as upheld by the court below, was correct.

THE CONSTRUCTION OF THE COURT BELOW IN HARMONY WITH PRIOR LEGISLATION.

The meaning of the act of 1876 can best be understood by further examining the earlier legislation which it was designed to carry out.

The act of June 3, 1856 (11 Stat., 17), designated three modes by which the United States should compensate itself for the grant:

1. The selling price of the alternate sections of public lands adjacent to the road was fixed at double minimum. (Section 2.)

2. The roads were declared public highways for the United States. (Section 3.)

3. The United States reserved the right of making its own terms for payment for mail service over the aided road. (Section 5.)

This last provision (the one affecting this case) is in these words:

"SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads, under the direction of the Post Office Department, at such price as Congress may, by law, direct: *Provided*, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same."

The acceptance of the grant bound the road aided by the grant to the conditions of the third and fifth sections.

The designation of the roads to be subject to these conditions is merely "said roads." The roads before mentioned throughout the whole act are the roads to aid whose construction the grant was made. These, we have seen, were the roads in Alabama.

It may be that some of these roads were built by corporations owning connecting roads in other States; it may be that they were built by independent corporations. If the latter, some have since been sold to corporations owning connecting roads. In any event, it is clear that the roads subject to the conditions of this grant as to the power of Congress over its mail pay were simply the roads in Alabama by the side of which a grant was made. The fact of ownership of a land-grant railroad was not made by this act to grant to the United States an easement of such magnitude in the whole road of the corporation.

The owner of any road aided by such a grant thus agreed to be subject to the action of Congress in regard to its mail pay over the aided road. But Congress had reserved no rights over other railroads of the same owner.

We do not find that any advantage was ever taken of the provision of section 5 of this act by the United States until the act of July 12, 1876. Up to that time the land-

grant roads had received the same mail pay as other roads.

By section 13 of that act (19 Stat. 82) Congress asserted its long unused powers and made the mail pay of the land-grant roads 20 per cent. less than that on non-land-grant roads.

"SEC. 13. That railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct shall receive only eighty per centum of the compensation authorized by this act."

This act plainly says that where the conditions of the granting acts provide for the fixing of pay by Congress, the power of Congress is now asserted. It is a simple exercise of powers conferred upon Congress by the original contracts with the roads. Where no such condition exists, no reduction is required. But the condition of the land-grant contract in this case, we have seen, provided for a reduction of pay only over the road aided. No such condition is provided for the road not aided; consequently this act does not require any reduction of pay on the not aided road.

The appellant's contention ignores the clearly-expressed intent of this law to be consistent with the original granting acts and construes it as a departure from those acts, and an assertion of a power far outside of that given in the granting act. As construed by the court below, the two acts of 1856 and 1876 are read together.

The appellant's brief refers to an opinion of the Attorney-General in the case of the Mobile and Ohio Railroad. (13 Op., 536.) Upon this we remark:

1. The opinion is merely the view of one of the parties litigant.

2. It is not a correct exposition of the law of its own case.

3. It is not applicable to this case.

The act of September 20, 1850 (9 Stat., 466), granting public lands in aid of the construction of a railroad from Chicago to Mobile, provided (section 7) that "the said railroad and branches shall be and remain a public highway for the use of the Government of the United States, free from toll or other charges upon the transportation of any property or troops of the United States." The Attorney-General decided that the road for its whole length was subject to this provision, although one of his predecessors had decided that no lands were granted to aid that part of it in Kentucky and Tennessee. (5 Op., 603.) His chief argument was *ex necessitate*, as follows (p. 537):

"Under any other rule, it might happen that a road would be broken up into short and irregular divisions, alternately open and closed to the free use of the Government, and nothing could be more useless than a right to transportation subject to such interruptions."

It is to be observed that this argument does not apply at all to the present question of mail pay. The object of the mail-pay provision is to give Congress authority over the compensation of the road aided by the grant. This is fully accomplished by regulating the charges over the land-grant portion.

But the essential difference is that this act of 1850 made a grant "in aid of the construction of a railroad from Chicago to Mobile." The prime object of the grant was to make a trunk line, and this trunk line so brought into existence was made a public highway. In the case at bar the object was to aid the construction of a local road in Alabama, and over the local mail pay of this road Congress reserved authority.

We can not think that the opinion was correct, even in

the case in which it was announced. The road subject to these easements is on the face of the act co-extensive with the road aided. No rule of interpretation is more dangerous than that which seeks to determine the meaning of an act by a supposed ultimate policy. Courts must consider acts of Congress as things done, not as indices of things hoped to be done.

This case presents a question very like that decided by this court in United States *v.* Kansas Pacific Railway (99 U. S., 455) and United States *v.* Central Pacific R. R. (118 U. S., 235). The court below has fully referred to this subject in their opinion (rec. p. 17). The burdens imposed by the Pacific Railroad acts were held to apply only to the aided portions of the companies' roads. This is the claim of the appellees in this case.

THE CONSTRUCTION BY THE COURT BELOW IS IN CONSONANCE WITH THE WORDS OF THE ACT.

We have seen that the appellant's construction of the act of 1876 ignores its express purpose of being consistent with the original granting act of 1856. But we are met by the objection that the words "in whole or in part" contained in the act of 1876 can not be explained, except upon the theory of the appellant.

It is necessary to give effect to every word of a statute; full effect is given to these words under the construction of the court below.

Had the statute been passed without these words, two contentions might have been asserted by railroad companies whose roads had been aided by land grants.

a. If the aided road was only a part of the company's road, the company might reasonably have asserted that its railroad was not "constructed by a land grant," since only a part had been so aided in construction.

b. Even if its entire length had been aided, it migh

have asserted that its railroad was not "constructed by a land grant," since it had been constructed in part by private capital, in part by town and county grants, and only in part by the aid of the grant of public lands.

To avoid such contentions and to make it certain that an equally proportioned burden should rest upon every company whose road had been even in part constructed by a land grant, the words "in whole or in part" were inserted.

We therefore assert that the interpretation of the court below is—

1. In consonance with the words of the statutes.
2. Reasonable and equitable in its results.
3. Supported by contemporaneous construction.
4. In harmony with prior legislation.

It is consequently the true interpretation of the law.

PAYMENTS IN MISTAKE OF LAW.

If the court below was correct as to the meaning of the act of July 12, 1876, no further question can arise as to the claims stated in Paragraphs VIII and IX of the amended petition (rec. pp. 8, 9), being the first three items as summarized on pages 9 and 10 and set forth in Findings II (rec. p. 15).

But the claims stated in Paragraph VIII (rec. pp. 8, 9) forming the first and second items of the summary (rec. p. 9) and of Finding VII (rec. p. 15) do not rest upon this ground alone. This part of the claim consists of two items:

1. Money paid to the Alabama and Chattanooga Railroad Company under the original construction of the act of July 12, 1876, and subsequently withheld from this claimant.

2. Money paid to this claimant under this construction and subsequently withheld.

The court below has found (Findings VIII, rec. p. 15) that these deductions were made entirely on account of a supposed error of law.

The difference between the Postmasters-General from 1876 to 1885 and the Postmaster-General in 1885 was purely a difference of law. There was no mistake of fact. The transactions were closed and settled, and the new Postmaster-General reopened them and restated them and held back the claimant's money because his view of the law was different from that of his several predecessors. This action was not warranted by law. The courts have uniformly held:

1. That the head of an executive department can not reverse the decisions of his predecessors where no new facts appear.

2. That money paid in mistake of law can not, in the absence of special circumstances, be recovered back.

These two propositions are so well known that it is hardly necessary to do more than refer to the authorities. On the first we refer to the case of The United States *v.* The Bank of the Metropolis (15 Pet., 377), where the Supreme Court said:

"This right in an incumbent of reviewing a predecessor's decisions extends to mistakes in matters of fact arising from errors in calculation, and to cases of rejected claims in which material testimony is afterward discovered and produced."

Upon the latter proposition, so far back as the case of The United States *v.* Freeman, in 3 How. 556, it was decided that payments made upon one construction of the law to an officer of the Army can not be recovered back, even though the construction be erroneous. The doctrine has been frequently announced in the Court of Claims in a series of cases from Lavalette *v.* The United States (1 C. Cls., 147), and repeated in Hedrick *v.* The

United States (16 C. Cls., 88, 104), Arthur *v.* The United States (16 C. Cls., 422, 433), Jackson *v.* The United States (19 C. Cls., 504). In the case of Miller *v.* The United States, and other cases involving the same principle decided at the same time (19 C. Cls., 338), it was held that pay allowed in mistake of law to an officer legally out of the United States service could not be recovered back. In Mullett *v.* The United States (21 C. Cls., 485) it was again held that, in the absence of fraud or mistake of fact, a payment based upon a settlement between the claimant and the accounting officers possessing jurisdiction could not be reopened, even if erroneous.

On this state of facts we think it apparent that there can be no doubt that the act of the Postmaster-General in directing the deduction from the current mail pay of the claimant of the sums theretofore paid in excess of the amounts due under his construction of the law was without legal authority, and that the claimant is entitled to recover these sums back, irrespective of whether his or his predecessors' construction of the law was correct.

Still less doubt can arise as to the first item of the claimant's petition. This is for sums paid to the Alabama and Chattanooga Railroad Company, a different and distinct corporation. Even if the claimant might be subject to the deduction complained of for moneys paid to it under an erroneous construction of the law, we do not see how it can be responsible for moneys wrongfully paid to another corporation, whose relation to the claimant was merely that of former owner of the property now possessed by the claimant.

ERROR IN CALCULATION OF DISTANCES.

We have thus far accepted the basis of distances upon which payments were originally made as a correct statement of the total length of road and the relative dis-

tances of the land-grant and the non-land-grant portions of the road. The distances stated in the orders of the Postmaster-General are as follows:

	Miles.
Land-grant road	270.5
Non-land-grant road	24.5
Total	295.0

The correct distances upon the road as found by the Court of Claims (Findings II, III and IV, rec. pp. 12, 15), are as follows:

	Miles.
Land-grant road	263.85
Non-land-grant road	31.60
Total	295.45

Thus the higher rate of pay is due upon 7.1 miles, being the difference between 24.5 and 31.6 miles. Upon 6.65 miles of this the claimant has received the lower rate, and upon .45 of a mile the claimant has received no pay. This amount is calculated in Paragraph XI of the petition (record, p. 9) and found by the Court of Claims (Finding IV, rec. p. 15).

If our original position be correct, that the claimant is entitled to full pay on all its non-land-grant road, the plain error in calculation should be corrected. By this petition the claimants do not seek to go back further than January 1, 1882, being deterred by the statute of limitations (rec. pp. 9, 15). The Court of Claims finds (Finding X, rec. p. 15) that the claimant did not acquiesce in the deductions or erroneous calculations. (Record, p. 43.)

CONCLUSION.

Upon this statement the case is respectfully submitted, in full confidence that the court will find the law of the case correctly embodied in the following propositions: